1948. **File No.** O Indus Dispu tes/48

Legal Deptt

A BRANCH

Subject:—

Opinions under the

Industrial Disputes Act

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Opinion of the A.L.A.

Industrial Disputes Act, 1947.

Whether retrenchment amounts to lockout.

The question raised for the consideration of the A.L.A. is whether the management of Messrs. Alcock Ashdown & Co. Ltd., Bombay, is liable to penalty under section 31(1) and section 26(2) of the Industrial Disputes Act, 1947.

2. Section 23 of the Act provides that no employer of any workman who is employed in any industrial establishment shall declare a lockout -

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings.

Section 24 goes on to declare that a lockout shall be illegal if it is declared in contravention of section 23; and under section 26(2) an employer who commences, continues or otherwise acts in furtherance of a lockout which is illegal under the Act is made punishable with imprisonment etc. The question for consideration, therefore, resolves itself into the enquiry whether this is a case of an illegal lockout as defined above.

3. "Lockout" has been defined in clause (b) of section 2 to mean the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. Admittedly, in the present case, Messrs. Alcock Ashdown Co., Bombay did not close its place of employment, nor did they suspend work. What they claim to have done is to effect retrenchment twelve persons on the ground that it was forced to do so by shortage of steel. We have, therefore, to decide whether retrenchment of this kind can be construed as the employer's refusal to continue to employ any number of persons employed by him.

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4. Such retrenchment would not be included in the term "lockout" as it is ordinarily understood. A lockout is generally taken to mean the closure of a works by an employer to allow his workmen to work unless they will accept his terms of wages or the conditions of labour he imposes. In neither case is the employment finally determined, the intention of the workmen in the one case and of the employer in the other being that the employment should be continued as soon as a satisfactory settlement of the matter in dispute can be arrived at. See the case of Amalgamated Society of Engineers (Perth Branch) v. Millars' Karri & Jarrah Co.,Ltd., 1907, 87 A.L.R. 207 quoted at p.573 of Words and Phrases Judicially defined Vol. III. It is upon these considerations that the definition of a lockout has been framed in the Trade Disputes and Trade Unions Act, 1927 (17 Geo.V., c.22) where the expression "lockout" is defined to mean the closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or condition of or affecting employment. It will be noticed that the latter part of this definition has been left out in the definition as adopted in the Industrial Disputes Act, 1947. It would seem, therefore, that the definition as given in the Act is wider and does not contemplate a refusal to continue to employ in consequence of a dispute only with a view to compelling employees to accept certain terms or condition as the English Act does. Refusal to continue to employ for any reason would amount to a lockout under the Act. Nevertheless, it must be refusal to continue to employ. The phraseology is peculiar, and is intended to convey that what is contemplated is not final termination of employment by merely refusal of continuance of employment with the ultimate idea of resumption of employment. From that point of view, final

determination of employment for reasons of retrenchment would not amount to a breach to entail action apply even under the wider scope of the definition in the Indian Act. Some support for this view can be gathered from the case of Lakshmi and Kamal and Co. (1937,39 Bom Journal, 39 at 42 Bench Division, p.880) where it was held in a criminal case exception in a charge sheet that the A, B and C were employed by the Company and not employed by them because it was open for them to employ or not employ. In short, if the Company is able to substantiate that the employees were discharged on the grounds of retrenchment for lack of work owing to shortage of steel, this would not be covered by the definition of "lock-out", and consequently, the question of treating it as an illegal lock-out and visiting it with the penalty provided therefore may would not arise.

The liability under section 33(1) is equally doubtful. Section 51(1) provides punishment for contravention of the provisions of section 33. Under section 33 no employer shall during the pendency of any conciliation proceeding or proceeding before a Tribunal, in respect of any industrial dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service as liable to them immediately before the commencement of such proceedings, nor, save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be, shall he during the pendency of such proceedings, discharge, dismiss or otherwise punish any such workmen, except for misconduct not connected with the dispute. Discharging employees on the ground of retenchment or for lack of work cannot be treated as altering the condition of service. The discharge contemplated by the concluding part of the section is obviously as a punitive measure of the nature of victimization. Emphasis must, in this connection, be placed mxx upon the words "otherwise punish" which define the ejusdem generis character of the whole expression. If the company's representation be true the discharge in this case can not be treated as a measure of punishment.

5. On the whole, therefore, it is doubtful whether a prosecution under section 33(2) or section 31(1) can be successfully sustained against the Company.

sd/- P.M.L. 91
Remembrancer of Legal Affairs

W.B. to P.S.D. No. 314 dated the 10th Jan. 1948

XXIIIe of the R.L.A.

Inclusion of demand for strike pay in the order under, section 10(1) referring the dsipute for adjudication. Industrial Deiputes Act, 1947, Section 2(k), 10(1)(c).

The political and Services Department by its order No. 1103/46, dated 14-10-1948, issued under section 10(1) of the Industrial Disputes Act, 1947, has referred the industrial dispute between the Mahalakshmi Glass Works Ltd. Bombay, and thd workmen employed under it for adjudication to the Industrial Tribunal. But it appears that Government has not included the demand for strike pay in the said order as in the opinion of the Joint Secretary, Political and Services Department, strike pay was not part of the dispute at one time but after the workers went on strike they have made it an issue. The R.L.A. is requested to advise on the question whether the demand for strike pay should be included in an order under section 10(1) of the Industrial Deiputes Act, 1947.

Under clause(c)of section 10(1)of the Industrial Deiputes Act, 1947, if any industrial dispute exists of is apprehended, the appropriate Government may by order in writing refer the dispute to a tribunal for adjudication. "Industrial Dispute "as defined in cl(k) of section 2 means any dispute or difference between the employers and employers, or between employers and workmen, or between workmen and workmen, which which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, or any person. This definition appears to be very wide and any dispute or difference regarding demand for strike pay between the employees and the employers would be inlouded in the term industrial dispute. The fact that strike pay was not part of the dispute at one time would be immaterial and therefore Government ought to have referred this demand also for adjudication (cf.R.L.A.'s opinion No. 8442, dated 19-8-1947). Since this demand is not included in the demands referred to the Industrial Tribunal by the Politi al and Services Department Order No.1103/46, dated the 14-10-1948, and since the Tribunal is already seised of the matter, it would be necessary to refer this demand by a fresh order under section 19(c) and request the Tribunal to hear it along with the main dispute, (cf.R.L.A.'s No. 8781 ,dated the 3rd September 1947). Sd/- PNL 3-2

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 1186,dated the 4th February 1948.

H.R.D.
6-6-96
C.A

Office of the R.L.A.

I gather that the notifications are issued under the Central Act. The definition of 'employer' in that Act which has to be read with the definition of an 'industrial dispute' is not defective. I do not think that it was intended to be an exhaustive definiton, in the sense that no other kind of employer excepting those mentioned in (i)and(ii) of Section 2(9) was intended to be included therein. The object of the definition is to indicate who shall be taken to be the employer for purposes of the Act in the the two kinds of industries described therein; as otherwise for such industries it would be difficult to fix the authority which can be dealt with as an employer. The definition does not in fact define an employer but defines who is an employer in relation to the two kinds of industries. To hold otherwise would be to limit the operation of the Act only to Government and Local Government industries. That That I think would be disembowelling the Act. The point taken by the applicants can be successfully met. If necessary, a conference may be arranged with the Advocate General. I have already communicated to Little & Co, the substance of this note. Secretary, Labour may please see and confirm.

Sd/- P.M.L
26-8

Remembrancer of Legal Affairs.

Seen and confirmed
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Secretary, Labour

H.R.D.
6-6-36
C.4

Office of the R.L.A.

It appears that the industrial dispute between the Wallace Flour Mills, Bombay and the workmen employed under it was referred for adjudication on 10th July 1947 under Govt. Order, P.A.S.D. No. 1517-60/46. The award was made on 28th November 1947 and by an order made by Government dated the 11th December 1947 under section 30(2) read with section 19(3) of the Industrail Disputes Act, 1947, the award has been made binding on the Wallance Flour Mills, Bombay and the workman employed under it, dismss directing that the said award should come into opeation on the 15th December 1947 and remain in operation for a period of one year. Under paragraph 7 of the award, the employeees of the Wallace Flour Mills are entitled to gratuities at certain rates on the basis of the period of employment. The notice of strike, as a result of which the dispute was refrred to the Tribunal for adjudication, was given on23rd June 1947, but about 300 employees were retrenched on 23-6-47, that is to say, after the notice of strike was given and a reference made to the Tribunal for arbitration. The Wallace Flour Mills, Bombay, seem to be contending that these retrenched workmen are not entitled to gratuities under the awards on the ground that on the date on which the award was brought into force, these workmen were not in employment. The Labour Department seems to be of the opinion that the terms of the award should be implemented from 15th December 1947 on which date it was brought into operation and remain in operation for a period of one year thereafter, and consequently, the persons who have been discharged before the 15thvDecember 1947 would be entitled to gratuity under the award (vide pp. 95-96 ante). The following questions have been raised for the consideration of the R.L.A. :-

1. Whether the view taken by the Labour Deptt. Deptm at pp. 95-96 is correct; and, if so, whether prosecution under section 26 is the only remedy for non-compliance?

2/ Whether under section 34(1) of the Industrial Disputes Act, 1947, the Provincial Government can authorise any officer(i.e.n Labour Officer) to launch prosecution?

3. Whether day-to -day non-compliance would constitute a single

P.T.O.

constitute a single offence under section 29 or a repeated offence?

2. Under caluse(a) of section 18 of the Industrial Disputes, Act, 1947, an award which is declared by the appopriate Government to be ~~bidnd~~ binding under sub-section(2) of the Section 15, shall be binding on all parties to the industrial dispute; and under caluse(d) where a party referred to in cluase (a) or clause(b) is composed of workmen, on all persons who were employed in the establishment or part of the establishment as the case may be, to which the dispute relates on the date ~~of~~ the of the dispute, and all persons who subsequnently become employed in that establishment or part. The disupte in the present case arose sometime before 23-6-47 on which date the notice of strike was given by the workmen employed by the Wallace Flour Mills, Bombay, and the reference to the Tribunal was made on 10th July 1947 for arbitation. It is, therefore, clear that on the date of the dispute the 300 workman who were subsequently retrenched on 23-8-47 were employed in the establishment withinthe meaning of clause(d) of section 18. Consequently, these retrenched workmen would be deemed to be parties to the industrial dispute and the award made would be binding on these retrnched workmen and the Wallace Flour Mills, Bombay. This legal position is made more explicit by the definition of 'workman' in clause(s) of section 22 2 whereunder even a workman discharged during a dispute is considered 'workman' for the purposes of this Act. The view taken by the Labour Department At pp.95-96 is correct and the 300 retrenched workmen would be entitled to the benefit of gratuity under the award, the fact that the award was brought into operation from 15th December 1947, that is to say, after these workmen were retrenched, being immaterial.

3. Under section 18 of the Industrial Disputes Act, an award declared by the apporpiate Government to be binding under sub-section(2) of section 15, shall be binding on all parties to the Industrial dispute. There is no procedure prescribed under the Act for enforcement of the award. It appears from the penalty prescribed under section 29 for breach of the settlement or award that the only way to enforce the award would be to prosecute the party failing to implement the award. Consequently, prosecution under section 29 is the only remedy for non-compliance of the terms of the award.

4. Section

4. Section 34(1) provides that no court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government. It would, therefore, be competent for Government to authorise any officer(say, for instance, Labour Officer) to launch a prosecution under this Act.

5. Under section 29 of the Industrial Disputes Act, if any persons commits a breach of any term of any settlement or award which is binding on him under this Act, he shall, on his first conviction, be punishable to fine which may extend to Rs. 200, and in the event of a second or subsequent conviction with fine which may extend to Rs. 500. The breach in this case would be the Non-payment of the gratuity. Once non-payment is established, the breach is complete, and so too the offence. The offience has not been made a continuing offience; nor is there any indication in the section that continuing default is to be punished until the thing required is done by the defaulter. Criminal enactments are strictly construed; and, therefore, the words"second or subsequent conviction" would be construed to mean a conviction for another distinct breach and not for the same breach further continued in point of time. The latter part of the section only provides for heavier punishment for distinct subsequent breaches on the theory of previous convictions.

Sd/-
29-3

Remembrancer of Legal Affairs.

M.R.D.
6-6-56
C.4

U.R. to Labour Department No. 3061 dated the 29th March 1948.

Office of the R.L.A.

Dispute between Wallace flour Mills and its eimpoyees.

Industrial Disputes Act, 1947. Section 2(s), 18(a)

R.L.A.'s opinion No.3061, dated 29.3.1948.

In his last opinion No. 3061, dated 29th March 1948, the R.L.A. opined:

"Under clause(a) of section 18 of the Industrial Disputes Act, 1947, an award which is declared by the appropriate Government to be binding under sub-section (2) of section 15, shall be binding on all parties to the industrial dispute; and under caluse(d) where a party referred to in clause(a) or clause(b) is composed of workmen, on all persons, who were employed in the establishmentor part of the establishment, as the case may be, to which the dispute relates on the date of the dispute, and all persons who subsequently become employed in that establishment or part. The dispute in the present case arose sometime before 23.6.1947 anwhich date the notice of strike was given by the workmen employed by the Wallace Flour Mills, Bombay, and the reference to the Tribunal was made on 19th July 1947 for arbitation It is, therefore, clear that on the date of the dispute the 300 workmen who were subsequently retrenched on 23.8.1948 were employed in the stablishment withinthe meaning of clause(d) of section 18. Consequently, these retrenched workmenwould be deemed to be parties to the industrial dispute and the award made would be binding on these retenched workmenand the Wallace Flour Mills, Bombay. This legal position is made more explicit by the definition of 'workman' in clause(s) of section2 whereunder even a workman discharged during a dispute is considered'workman' for the purposes of this Act. The view taken by the Labour Department at pages 95-96 is correct and t the 300 retrenched workmen would be entititled to the benefit of gratuity under the award, the fact that the award was brought into operation from 15th December 1947, that is to say, after these workman were retrenched, being immaterial."

After that opinion was given it appears that the Public Prosecutor Bombay, who was requested to draft a complaint, discussed the matter with Meassrs, Datar and Kale, Labour Officers and while conceding the soudness of the argument that the 300 retrenched persons must get the benefit of the award, he has reaised the question whether the scheme can be said to have come into operation not from and after 15th December 1947 but from and after the date of reference to the adjudication when the 300retrenched people were employees. The R.L.A. is requested to adivse on this point.

The question reaised by the Public Prosecutor is thoroughly examined by the R.L.A. in his last opinion and the doubt raised by him does not appear to be well founded. According to the Scheme of the Act, as is manifest from the provisions of sections 15, 18and19, it appears that the intention of the legislature is to give benefit of the award even to persons retrenched or discharged or dismissed from service during the pendency of the proceedings before the Tribunal. It is apparent from clause(d) of section 18 that even the 300 retrenched workman are deemed to be partics to the award. That being so, they are entitled to the benefitof the award during the period of its operation. The demand for gratuity made in the present case by the

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The demand for gratuity made in the present case by the employees has been granted by the Tribunal on the basis of the length of service before death, retirement or resignation or termination of service as the case may be. In computing this period of service, in respect of these retrenched workmen, under sub-clause(3)of clause 7 of the award therein would arise no difficulty, for their services would be deemed to have been terminated on the date of their retrenchment. Consequently, it appears, no difficulty can be experienced in enforcing the part of the award in respect of gratuity. The Public Prosecutor may therefore be advised to draft a complaint accordingly and proceed with the case.

Another point raised by the Public Prosecutor is as to who are the persons actually to be prosecuted under section 32 of the Industrial Disputes, Act, 1947. Under section, 32,where a person committing an offence under this Act is a company, or other body corporate, or an association of persons(whether incorporated or not), every director, manager, secretary, agent or other officer or persons concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence. The Directorate of Labour Administration suggests at p.3 ante that Mr. Rahamat Farnandes Vinanji, a Director of the Company, who had taken part in the negotiations and signed the letters on behalf of the Company, would be the persons to be prosecuted under section 32. That suggestion may be accepted and Mr. Rahamat Prosecuted.

Sd/- P.M.L

7-5

Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 4436 dated the 7th May 1949.

H.R.D:
6-6-96
C.A

Office of the R.L.A.

It appears that the Indian Standard Metal Co.Ltd., Bombay has 330 daily paid and 111 montly paid workers. Due to financial circumstances the Co. was forced to retrench 44 daily paid workers. The workers of co. have a Union called the Metal Mazdur Sabha and this Union took up the question of retrenchment and also of other demands like increased pay and dearness allowances. As the Co. was not willing for a settlement the Union gave a notice on 27th March that they would strike on 10th April 1948. Later the date was postponed to 12th. In anticipation of strike and fearing damage to the property of the Co., the Co. closed their works on 11th April. Later on, however, the Co. by a notice put up on 20th April offered to open the works on 22nd. The workers, however, did not turn up and on 26th the Co. gave notices to three workers stating that unless the workers returned to work by the 3rd May they would be discharged under standing orders (SO.19(f) read with No.20) for misconduct, viz, absence without notice for 7 days. As the workers did not turn up, the Co. discharged almost all the workers on the 4th May.

Thereafter, Mr.Kamerkar, General Secretary of the Union, contacted Government and in the hope that Government would refer the dispute for adjudication, advised the workers to resume. The workers, it appears, actually resumed on 20th May and were taken up by the Co. Co. on old pay. It is however contended by the Co. that as they were legally dismissed under the Standing Orders, they are now new recruits and the ~~under the Standing Order, they are not new recruits~~ and the dispute cannot be referred for adjudication for want of old employees

On these facts the Labour Secretary has raised the following points for R.L.A.'s advice.

(1) Is not the workers' refusal to rejoin after 22nd April equivalent to "strike"?

(2) If so, has the management power to effect discharge during the continuance of the strike?

(3) If the discharges are irregular cannot a reference to be made to adjudication covering all the workers (except 44 retrenched workers) and all their disputes which may be legitimate by legitimately industrial dispute?

Under section 10(1)(c) of the Industrial Disputes Act, 1947

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1947, if any industrial dispute exists or is apprhended, the appeer appopriate Government may,by order in writing, refer the dispure to a Tribunal for adjudication. To be able to refer for adjudication there must, therefore, be an existing or apprehended "industrial dispute". That term is defined inclause(k) of section 2 of the Act and means any dispute or difference between employers and employyers, or between employers and workmen or between workman and workmen, which is connceted with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. This definition is veryc wide and the dispute in the present case would be an industrial dispute. It may be true that the dismissal of the workers was in accordance with the standing orders but that fact will not terminate the dispute(cf Khatau Makanji spg.&Wvg. Co.Ltd.,V.S.R. Despande, 45Bom.L.R. 657). and a workman discharged during that dispute would still remain a workman for the the purposes of the Act(vide section 2(s);and so long as there is any industrial dispute existing, it would be competent to Government to refer such dispute for adjudication. If this be the correct position, it would be unnecessary to consider wehther the postion after 22nd April amounted to a "Strike " or a "lockout" and whether Company could legally dismiss or discharge the workers during the period.

Sd/- P.M.L
28-5

Rekembrancer of Legal Affairs.

U.R. to Labour Deptt. No. 5095 dated the 28th May 1948.

M.R.D.
6-6-56
C.4

Office of the R.L.A.

Withdrawal of a reference for adjudication made to a Tribunal. Industrial Disputes Act, 1947-s.10(1).

A reference has been made for adjudication under sub-section (1) of section 10 of the Industrial Disputes Act(XIV of 1947). Of the two parties to the dispute one wants to pursue the adjudication while the other wants to press for Government's withdrawing the reference. The advice of the R.L.A. is sought on the question whether a reference so made can be withdrawn.

2. Section 10(1) of the Act reads as follows:

> "If any industrial dispute exists or is apprehended, the appropriate Government may, by order inwriting,-
>
> (a) x x x
> (b) x x x
> (c) Refer the dispute to a Tribunal for adjudication:
>
> Provided that where the dispute relates to a public utility service and a notice under section 22 has been given the appropriate Government shall unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpendient so to do, make a reference under the sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced."

3. Although it appears from the main provison that it is no incumbent upon the government to refer the dispute to a Tribunal for adjudication, the proviso shows that in certain circumstances it is obligatory upon the Government to make the reference. It is presumed that the reference in this particular case has not been made under the proviso.

4. The object of the enactment is to make provison for the investigation and settlement of industrial disputes, and the whole machinery of Conciliators, Boards, Courts and Tribunals has been evolved for the purpose of speedy determination of industrial disputes. The provisions of Chapter IV of the Act show that normally conciliation proceedings are to be held first before the question of a reference to Boards arises. It is after the Board finds itself unable to effect a settlement that a reference to the Tribunal becomes necessary.

The provisions of sections 12and 13 particularly of sub-section(5) and (4) respectively of those sections -shows show that where a settlement cannot be effected by the conciliation Officers or the Board, Government is ordinarily expected to makes a reference to the Tri bunal. Reasons

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Reasons for not making such a reference have to be recorded and communicated. Having regard, therefore, to be the object of the Act and the procedure outlined in Chapter IV, it would seem to be intention of the Legislature that a reference to a Tribunal should ordinarily be made in cases where a settlement of the dispute is not possible by other means. The proviso to sub-section (1) as well as the the provisions of sub-section(2)of section 10further make it obligatory upon Government to make a reference. The whole purpose of making a reference is to bring the dispute to a speedyend, and that purpose will be furstrated if the reference itself is withdrawn at the instance of one contending party. The dispute will thus remain outstanding with no pruspects of any settlement. We must understand and interpreet the Act the so as to suppress the mischeif and advance the remedy and so as to prevent a failure of its main intention. In that view it would follow that a reference once made to a Tribunal for adjudication ought not to be withdrawn.

5. Under section 20(3),proceedings befofe a Tribunal shall be deemed to have commenced on the date of the reference of a dispute for adjudication, and such proceedings shall be deemed to have concluded whenthe award is published by the appropaiate Government under section 17, or where an award has been laid before the Legislative Assembly under the proviso to sub-section(2)of section 15when the resolution of the Legislative Assembly thereon is passed. Having performed its duty of making a reference to the Tribunal Government becomes functus officio. The pwer given by section 21 of the General Clauses Act was not intended to interfere with judicial proceedings which have once commenced. Moreover once the Tribunal is seized of a particular dispute, no method seems to have been provided of concluding the proceedings before the Tribunal except in accordiance with this sub-section. A withdrawal of the reference would automatically put an end to the proceedings., but that contingency is not contemplated by the Act. It seems to be the intention of the Act that once a reference is made to a Tribunal, it must end in an award; and section 15(2) makes it ordinarily incumbent upon the Government to declare the award to be binding. The act does not,therefore,contemplate that the

contemplate that the proceedings before the Tribunal should prove abortive and be prematurely brought to an end without an award being made.

6. Under the general principles of the prevailing law regarding arbitrations, the authority of an arbitator shall not be revocable except for certain reasons. Compare Halsbury's Laws of England, Vol.I PP. 634-38, and section 5 of the the Indian Arbitration Act, 1940. Even under the common law of England, it was recognised that an agreement to refer to arbitation was always irrevocable so that if the reference were made under sub-section(2)of section 10 parties could not resile from such agreement. The law in England and in this Country now makes the submission to an arbitrator also irrevocable except for certain recognised reasons. Courts which are generally authorised to grant leave for revocation do so sparingly mainly to prevent substantial miscarriage of justice. No such ground is presumably alleged here. Ordinarily, therefore, in the absence of any express power to withdraw a reference once made, it would not be feasible for a party to retire from such reference. Express powers for revoking references are given in cognate statutes. Thus it is of interest to note that section 36 of the Commonwealth Conciliation and Arbitration Act, which authorised the court to refer the the whole or part of any industrial dispute or any matter out of the dispute to a Board also gives express powers to revoke such reference.

7. In my opinion, therefore, a reference once made to a Tribunal for adjudication cannot be withdrawn for the above reasons.

Sd/- P.M.L
13-5

Remembrancer of Legal Affairs.

U.R. to Secretary, Labour Department No. 4682, dated 15-5-48

M.R.D.
6-6-56
C.4

Office of the F.L.A.

Decision of a single Judge Original Side.

Whether binding on Mofussil Courts.

The decision of Coyaji J., though it be in a case on the original side of the High Court, would apply to a case in Poona in so far as it decides upon the construction of the Industrial Dispute Act, 1947, that re-instatement falls outside the jurisdiction of the Tribunal.

Sd/- p m l
16-7

Remembrancer of Legal Affairs.

U.O. to Lab. Deptt. No. 6679 dated the 16th July 1948.

M.R.D.K
6-6-76
C.4

Office of the R.L.A.

It appears that an industrial dispute between Firestone Tyre and Rubber Company of India, Ltd. and the workmen employed by it is pending before the Industrial Tribunal for adjudication under caluse(e)of section 10(1) of the Industrial Disputes Act.1947. Two parmphlets at pp. 103 and 105 ante have been issued by the General Secretary and Acting General Secretary of the Firestone Rubber Workers' Union respectively appealing to the workers to attend the Court on the date of hearing and to demonstrate their strength. In the pamphlet at p.105 ante the passage A runs as follows:-

> "Hernce do not foget 11th June"" Present yourself in the court by hundreds and tell Mr.Cable:'We will nevef rest till we get our Bonus with our mightly strength' " "

The passage 'B' runs as follows:-

> " Muster in hundreeds in the court and terrify the Government and the Comnay with our mightly demonstration."

The question raised for the considerration of the R.L.A. is whether these passages'A' and 'B' are not sufficient to prosecute Mr.Cadkari, the acting General Secretary, on the charge of instigating the strike of workers on 11th June 1948 under section 27 of the Industrial Disputes Act.

Section 27 of the Indistraial Disputes Act. 1947, makes punishable "any person who instigates or incites others to take part in or otherwise acts in furthera nce of a strike which is illegal under this Act," The circumstances which make a strike illegal are described in section 24 of the Act. There is no evidence in this case that on the 11th of June there was a strike within the definiion of that term as given in section2(q). Even Mr. G.N.Joshi, counsel for the Company does not seen to have made a statement that the workers had gone ona strike on the 11th, though at the eariler stage of the proceedings he had said that the workers had gone on a strike on the the23rd of April Besides, the passages at 'A' and'B' in the leaflet at p. 105 merely contain an exhortation to the workers to present themselves in hundred inthe Court for the purpose of a demonstration of strength and solidarity and the passage at 'C' shows that only those who can are invited to come to court. It is difficult to construe the exhortation, especi when read with the qualification contained in that

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with the qualification contained in the opening sentence, as an instigation or incitement to cause work by acting in combination, even for that one day. A prosecution under section 27 would not, therefore, be feasible.

P.M.L 28.6.48

Remembrancer of Legal Affairs.

U.R. to Labour Deptt., No. 6038 dated the 28th June 1948.

K.A.D.
6.6.48
C.A

Office of the Labour.

It appears that there is much substance in the contention of the General Secretary of the Food Industries Mazdoor Sabha. Although clause3(b) of the annexure to the order of reference includes even the employees in the Label, Solution and Tin Departments, the specific mention of the Coffee Department therein along with the other departments indicates that the coolies and other employees in that department form distinct and separate classes; and the operative part of the reference order itself limits the adjudication only to the dispute between Messrs. Peirce Ltd., Bombay and the workmen employed in their Coffee Department. In the circumstances the adjudication of the dispute regarding the employees in the Label, Solution and Tin Departments might be treated as beyond the scope of the reference. Consequently it appears necessary that Government could issue another reference to the Tribunal in respect of these employees and direct the Tribunal to hear it along with the first reference already made.

P.M.L 8d/- 20-7

Superintendent of Legal Affairs.

U.O. to Labour Deptt., 6893dated the 20th July 1948.

H.R.D.
6-6-96
C.A

Office of the R.L.A.

Question whether period of operation of award can be curtailed and whether the dispute can be referred to arbitration when the award is in force. Industrial Disputes Act, 1947.

Once the period of operation of an award is fixed by Government it cannot be varied or curtailed save with the consent of both parties. Consequently Government can have otherwise no power to curtail the period of the award in the present case. Nor would it be possible for Government to refer again the dispute for arbitration under the Industrail Dsps Disputes Act, 1947 before the expiry of the period of the award unless the dispute relates to a matter not covered by the award.

P.M.L 8d/-
27-7

Remembrancer of Legal Affairs.

UOR. to Labour Deptt. No. 7067, dated the 26th July 1948.

M.R.D.
8-6-96
C.4

Legal Department.

Splitting up of the industrial dispute Bombay Industrial Disputes Act, 1946- Section 3(17),42(1)(2),44((1),54(1), 56(2).

The Director of Labour Administration states at page 21 ante that whenan idnstrial dispute concerning a number of industrial dispute concerning a number of indistrial matters is brought into conciliation it has to be treated as a whole and cannot be split up even though the parties may be willing to adopt this course. He is of the view that it is not possibe to give effect to the recommendation of the Provincial Labour Advisory Board unless certain sections of the Bombay Industrail Relations Act, 1946 are amended. The Commissioner of Labour states that it may be considered whether it is legally feasible to treat each of the matters in dispute, covered by a notice of change, as an industrial dispute and so arrive at an agreement about individual matters and hold that a settlement has been arrived at in respect of so many industrial disutes leaving the others unsettled. The Politisal and Services Department is of the view that a single notice of change given by an employer or employee many times contains a number of matters in respect of which a change is desired and hitherto a notice of change which is not agreed to by the other party has been regarded as constituting one industrial dispute. That Department further states that sections 54to 58 appear to suggest one dispute for one notice of change, whether the notice covers one matter or more. The R.L.A. is requested to advise with reference to page 13 and page21 whether the Act should be amended.

2. "Industrial dispute" as defined by clause (17) of section 3 of the Bombay Industrial Relations Act, 1946, means any dispute or difference between an employer and employee or between employers and emplyees or between employees and employees and which is connected with any industrial matter. "Industrial matter" is defined in clase 18 as any matter relating to employment, work, hours of work, privileges, rights or duties etc. Subsection(1) of section 42 provides that any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. Sub-section (2) provides that an emplyee desiring a change in respect of an industrial matter not specified in Schedule I or III shall give notice

P.T.O.

shall give notice in the prescribed form to the employer etc. Under section 44(1) if within seven days from the date of the service of a notice under section 42 an agreement is arrived at in regard to the proposed change a memorandum is sent to the Chief Conciliator, the Registrar and the Labour Officer. Under section 44(1) if any proposed change in respect of which notice is given under section42 is objected to, the party who gave the notice has to forward a full statement of the case to the Registrar, the Chief Conciliator and the Conciliator of the local area for the industry etc. On receipt of the said statement of the case under section 54 the Conciliator has to enter the industrial dispute in the register kept for the purpose and thereupon the conciliation proceedings shall be deemed to have commenced from the date of such receipt(See section 55.). Under section 56(2) it is the duty of the Conciliator to endeavour to bring about the settlement of the industrial dispute. Under section 58(1) if a settlement of an industrial dispute is arrived at in a conciliation proceeding a memorandum of such settlement is drawn up by the Conciliator and is signed by the employer and the representative of employees and the Conciliation proceedings are deemed to have been completed (Section 63(1). Under sub-section(2) if no such settlement is arrived at the Conciliator closes the proceedings before him. It will thus be seen that the scheme of the Act shows that if there is any change in respect of an industrial matter specified in Schedule II or not specified in Schedule I or III, notice of changes prescribed in section 42 has to be given. This notice must relate to one or more than one matter and separate notices are not contemplated when there are more matters than one which constitute a dispute or difference. It is clear from section 58 that if the dispute is settled on all the points the Conciliator has to make a report to the Registrar and Chief Conciliator; if no settlement is arrived at even on one matter stated in the notice he has to make a failure report to the Chief Conciliator. Thus all matters stated in the notice constitute the dispute or difference (please See I.L.J.'s No. 8443, dated 19-8-47). Consequently there cannot be any splitting up of the industrail matters, as those which are likely to be settled and those which are not likely to be settled, for the purpose of referring the dispute for arbitration and if the Government desires to provide for such splitting up it may be necessary

to amend the Act suitably. The view taken by the P.W.D. in its note at page 23 ante appears to be correct.

Sd/-

I-8

Additional Secretary to Government.

M.R.D.
8-6-95
C.4

U.O. to Labour Deptt. No. 7260 dated the 2nd August 1949.

Action of the B.L.A.

Appointment of Mr. Merchant in place of Mr. Sarela.

Industrial Disputes Act, 1947. Section 8(2).

By a notification No. 575/46, dated the 12th January 1948 issued under section 7 of the Industrial Disputes Act, 1947, Mr. Akbar Sherafali Sarela, Judge, Labour Court, Jalgaon, was constituted an Industrial Tribunal for the adjudication of industrial disputes etc; and by notification No. 2361/46, dated 1st May 1948, Government referred the industrial dispute between the Oil Mills in West Khandesh and the the workmen employed under them for adjudication to the Industrial Tribunal consisting of Mr. Akbar Sherafali Sarela constituted under section 7 of the said Act. But Mr. Sarela, it appears, issued notices to the parties concerned and before he could hear the case, he has been transferred to Thana as an Extra Assistant Judge and his services as Industrial Tribunal are no longer available at Jalgaon. By notification No. 575/46, dated 19th April 1948 Government has constituted an Industrial Tribunal consisting of Mr. Salim M. Merchant for the adjudication of industrial disputes. The Industrial Disputes Act does not contain any provisions for the transfer of pending references from one Tribunal to another. Since, however, Mr. Merchant has been already constituted an Industrial Tribunal under section 7, of the question for the consideration of the B.L.A. is whether it is necessary that Mr. Merchant should be appointed under section 8(2) to adjudicate the reference which was pending before the Tribunal consisting of Mr. Sarela.

2. Sub-section(1) of section 7 of the Industrial Disputes Act empowers Government to constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act. Under sub-section(2) a Tribunal shall consist of such number of members as the appropriate Government thinks fit, and where the Tribunal consists of two or more members, one of them shall be appointed as the Chairman. Section 8 prescribes the procedure for filling of vacancies. Sub-section(2) of that section providing that where a Court or Tribunal consists of one person only and his services ceases

to be available, the appropriate Government shall appoint another independent person in his place, and the proceedings shall be continued before the person so appointed. Under clause (a) of Section 10(1) industrial dispute may be referred to a Tribunal for adjudication. It is, therefore, clear from these provisions that in respect of each industrial dispute a reference will have to be made to a Tribunal specifying the persons or persons constituting the Tribunal, and that Tribunal alone to whom the reference is thus made will have jurisdiction to adjudicate the dispute. It is true that Mr. Merchant has been constituted a Tribunal under section 7(1); but the reference for adjudicating the industrial dispute between the Oil Mills in West Khandesh and the workmen employed under them was not referred to the Tribunal consisting of Mr. Merchant but to the Tribunal consisting of Mr. Sarela. Since Mr. Sarela's services have ceased to be available, the Tribunal to whom the reference was made could not proceed with the adjudication although the Tribunal does exist. Consequently an appointment will have to be made under section 8(2) of Mr. Merchant so that that Tribunal may continue to hear the reference. The fact that another Tribunal has been constituted consisting of Mr. Merchant would not come in the way of his appointment in the place of Mr. Sarela; for there is nothing in Chapter II of the Act or in any other law which precludes a person from holding two such appointments. A notification under section 8 (2) appointing Mr. Merchant may be issued. The form at page 71 is in order.

Sd/- P.M.L.
12-7
Remembrancer of Legal Affairs.

U.O. to Labour Department, No. 6529, dated the 12th July 1948.

N.N.D.
7-6-56
C.A.

Office of the Ld.A.

Whether notification is necessary for a reference under Rule 20A of the Industrial Disputes (Bombay) Rules, 1947.

Industrial Disputes Act, 1947.

The view taken by the Labour Department in its office note at p. 179 ante is correct. Unlike rule rule 20A of the Industrial Disputes(Bombay) Rules, 1947 does not prescribe that a reference to the Tribunal should be notified, the reason being that the reference under rule 20A unlike the reference under rule 5 involves no liability requiring notification thereof. (See sections 23 of the Industrial Disputes Act, 1947.).

Sd/- P.M.K.
5-8
Examiner of Legal Affairs.

U.O. to Labour Department, No. 7440, dated the 6th August 1948.

M.K.D.
7-8-56
C.A

Office of the R.L.A.

In the Labour Department Order No. 161/48, dated 11-6-1948, although in the operative part of the order reference is made to the industrial dispute, it is clear from the annexture that there are more than one dispute. The accidental omission of plural for singular and the word "respectively" between the words "the workmen" and "employed under them" in the operative part of the order is not a material change in the order itself. There appears, therefore, no objection to amending the order by a corrigendum. The view taken by the Joint Secretary in paragraph 7 of his note, dated 13-6-1948 at p.99 ante is correct.

Sd/- P.M.L.
23-8

Remembrancer of Legal Affairs.

U.R. to Labour Deptt., No. 8034 dated the 23rd August 1948.

N.R.D.
7-6-56
C.4

Office of the R.L.A.

Under section 10 of the Industrial Disputes Act, 1947, it is only an industrial dispute which can be referred for adjudication. Upon the facts before us, an industrial dispute can only mean a dispute or difference between employers and workmen (Section 2(k)). As was pointed out in the case of the Colliery Employers Federation of the Northern District New South Wales (the Industrial Union of Employes) v. Brown(3 Commonwealth Law Reporter P. 255), the parties to an industrial dispute must be an employer on the one side and the workmen on the other. Until employer and workmen differ as to the terms of employment or conditions of labour, there is no industrial dispute. In that case, the Workman's Union had nothing to do with the particular employees who were parties to the dispute, and it was, therefore, held that as plaintiff the Union had no legal interest in the matter. In the case before us it is stated that with their consent the employees were transferred to the service of the Government of India on 1st January 1947 on which date the whole communication system and the company's communication assets were taken over by the Government. The Company no doubt maintains that all the sums due to the employees by the Company were paid to them, and that, therefore, the employees can have no claims against the Company which is about to be wound up. It seems, therefore, that the Company is still in existence. The dispute relates to matters which have reference to the time when the Company was the employer. Unless the Government of India have taken over all liabilities of the Company in the process of transfer, the Company would still remain liable. A dispute between employers and workmen pertaining to matters when the relationship of employers and workmen existed would still be an industrial dispute. There is nothing in the Act to suggest that ~~industrial~~ industrial disputes are to be confined to such disputes as pertain to a present relationship between employers and workmen. Sat long as the Company continues to exist and their liability has not been taken over by their successors-in-interest, there

should, on ordinary legal principles, be no objection to enforcing that liability against them by impleading them as defendant to the dispute. Otherwise, the undesirable result would follow that an employer will get out of his legal liabilities by a mere transfer of the concern to another employer. There is no justification, unless the arrangements between them so provide, why the Government of India should as the present employers be dragged into a dispute about matters which have no reference to employment by them.

2. On the other hand, it is possible to urge that the employees are no longer the employees of the Company, and that the dispute is not between them as employees and the Company as employers.

3. As the point is of considerable importance, the Advocate General is requested to favour Government with his opinion.

29-7 Sd/- P M L

Remembrancer of Legal Affairs.

U.O. to the Advocate General, Bombay No. 7111 dated the 29th July 1948

H.R.D.
7-6-36
6.4

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 9th August 1948.

Re:- U.R. to the Advocate General of Bombay, No.7111, dated the 29th July 1948.

OPINION.

I am general agreement with the Opinion of R.L.A.

The dispute relates to matters which undoubtedly refer to the time when the company was the employer, and unless the Government of India have taken over all liabilities of the Company including the liability in question in the process of transfer, the Company would continue to be liable to the employees. Thus test, is supposing a suit was to be filed inthis connection, who would be the party defendant? The cause of action in such a case, would be indeed against the Company and not the Government of India. It is true that the employees at present are no longer the employees of the Company. Nevertheless, the dispute refers to the time when the employer was the Company.

M.C.A. Sd/-
Advocate General

H.R.D.
7-6-56
C.4

Office of the R.L.A.

A copy of the Advocate General's opinion along with a copy of the Statement of the Case prepared by the Remembrancer of Legal Affairs, is forwared herewith.

P.M.L Sd/-
14-8

Remembrancer of Legal Affairs.

U.R. to Labour Deptt. No. 7641 dated the 12th August.

M.R.D.
7-6-56
C.A

Office of the R.L.A.

Whether a pilot of an aeroplane falls within the definition of 'workman'.

Industrial Dsipute Act, 1947.

The question referred to the R.L.A. for advice is whether the pilots employed by the Tata Airlines, Ltd, can be held to be workmen within the meaning of that word as defined in the Industrial Disputes Act, 1947.

2. "Workmen" is defined insection 2(s) of the Act as follows: "Workman" means any person employed (including an apprentic) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the pruposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that that dispute, etc. That Tata Airlines Ltd:, is an industry is not disputed. The underlined words thus give the substance of the definition for the purposes of this question. It is obvious that the work which the pilots do cannot possibly be described as clerical wor work. We have, therefore, to enquire whether pilits can be said to have been employed to do any skilled or unskilled manual work.

3. This definition seems to have been modelled on the lines of a similar definition ina Candian Act(See the notes from the Statement of Objects and Reasons on sub-clause (k) of the Trade Disptues Act (VII of 1929). I have been unable to discover any reported Candandian decision which would illustrate the scope of the definition.

4. However, there has beens a long series of decisions wherein the kindred expression

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" engaged in manual labour" used in the Employer's Liability Act and other similar enactments has been interpreted by the Courts in England. In once case, viz., Cook v. the North Metropolitan Tramways Co. (18 Q.B.D. P. 683) A.L. Smith, J was inclined to emphasise the distinction between "manual labour" and "manual work," especially with reference to the occupation of a dirive of a tramcar. This is what he said:

"The expression used, it should be noted, is not manual work, but manual labour, for many occupations involve the former but not the latter, as does telegraph clerks, and all persons engaged in writing. I cannot see the distinction between driving and other occupations which involve no manual labour though they do involve manual works."

Later cases, however, do not acknowledge the difference between manual labour ad manual work. Thus, in the case of Hoare, V. Robert Green,Ltd (1907 2K.B. P.315 at p.321) Darling J. said that he was not convinced that there was any distinction- any accurate distinction at all events -between manual labour and manual work. I do not think that manual labour need be labour requiring a great exertion of strength." See also the observation of Lord Sumner in 1921, 2.A.C.P.339 at p. 247 where it was said that there was no real warrant for construing "labour" as something more arduous and more perilous than mere "Work."

It would therefore be safer to treat both the terms "manual labourer" and "manual work" as indistinguishable for purposes of the Act.

5. The question whether a particular person can be said to be engaged in manual work- in this case skilled manual work- would have to be decided by the following two tests:

(1) In construing Acts of Parliament the Judges must use their own knowledge of the various employments existing throughout the realm(per Brett.M.R. in Morgan. V. The London General Omnibus Co., 1884, Q.B.D.P.832). There is no information on record to show what is the true nature of the actual work done by the pilots, but presumably a

pilot does not engage continuously in manual work in the same sense as a mechanic does. He is in charge of the aeroplane, uses controls with his hands, but it is the quality of his judgment as a pilot and the dexterity of his movements which perhaps constitutes the true nature of his works.

(2) Whether a persons is engaged to do skilled manual work would depend upon the real and substantial character of his employment. Every use of the hands cannot be called manual work for in that case there will be very few employments which will not come within that term. The following passage from the judgment of Lord Justice Fry in Bound v. Lawrence(1892 1 Q.B.D.p. 226) is very instructive:

"It is to be observed that it is difficult to imagine any work done by man so purely intellectual as to require no kind of work with the hands; and the converse is equally true that there can hardly be work with the hands that requires no intellectual effort. If thenthe words 'manual labour' are to have the fullsignificance which could be put on them, they would be extended to every kind of employment. That cannot be the true meaning of the statute, but some more confined interpretation must be arrived at. I agree that this must be done by looking to the nature of the substantial employment, and not to matters that are incidental and accessory. The determination of what is substantial and what is accessory may be a question of difficulty."

If the user of hanads is incidental to the employment and not the substantial object of it, it cannotbee be called manual labour or manual work.

In the case of Jaques v. Owners of Steam Tug Alexandra (1921 2 Appeal Cases P.229) which was the case of a Master of a stem tug, this test was practically adopted by the House of Lords, and Lord Sumner in construing the expression engaged in manual work" made the following observations:

Even on the words'engaged in' the courts have almost uniformly looked to the real and substantial work to be done, to the main duty of the employee and the general nature of the employment, to that which primary and substantial in his operations and not to that which is merely incidental and accessory. They have not fixed their attention simply on manal labour, the performance of which may occasionally be required irrespective of its relation to the other duties which the workman may be engaged to perform."

the test in such cases is whether the work with the hands is the essence of the work or whether it is some other power or quality in the employment which is the essential matter.

6. These two considerations would seem to indicate that a pilot cannot be said to be engaged to do skilled manual work although such work may be incidental to his employment. If it could, however, be shown that he is also required to do necessary repairs, then it might be possible to bring him within the definition(cf Smith v. Associated Omibus Co., 1907 1 K.B. p. 916, where the driver of a motor omnibus who has, when out with the omnibous, to do such necessary repairs to it as he is able to do, was held as a person engaged in manual labour).

7. Upon the strict interpretation of the words given in the definition and without information as to the true character of the pilots work, it would seem that a pilot could not be covered by the definition. There is, however, this consideration that the dfinition would have to be construed primarily in relation to the object of the Act, which is the settlement of industrial disputes and it may be possible to argue that it could not have been the intention of the enactment that an important class like pilots, divers, or masters of ships, who have ordinarily not been held to be engaged in manual labour or manual work should be excluded from the scope of the Act and that disputes in which they were involved should not be settled with the aid of the machinery provided by the Act.

8. In my opinion the postion is not therefore quite free from doubt, although I am inclined to hold the views that on a strict interpretation the pilot may not be included within the definition.

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29-9
Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 9218 dated the 29th September 1948.

M.R.D.
7-6-56
C.4

Office of the R.L.A.

The Industrial Disputes Act.- 1947. Establishment of Benches of the Tribunals constituted under.

The view taken by secretary Labour Department is correct. It would not be legally possible to establish Benches of the Tribunal by amending the rules without amending the Industrial Disputes Act, 1947 itself.

Sd/-
29-10

Remembrancer of Legal Affairs.

U.R. to Labour Department No. 10216 Dated the 30th October 1948.

M.R.D.
7-6-65
C.A

Office of the M.L.A.

Publication of orders made on applications under Rule 20 of the Industrial Disputes (Bombay) Rules, 1947 for correcting errors- Industrial Disputes Act, 1947- Sections 15 and 17.

The interim awards dated 5.6.1948 in the disputes between the Alcock Ashdown and Co., Bombay, Richardson and Cruddas and the Rangoon Dock Ltd, Bombay and their workmen were published and enforced respectively by Government Notifications and Orders Labour Department No. 77/48, dated 15-6-1948, No. 1245/46, dated 15-6-1948 and No. 9426/34-I, dated 17-6-1948. The employers made applications to the Tribunal under Rule 20 of the Industrail Disputes(Bombay) Rules, 1947 for correction of errors arising from accidental slip in drawing up these awards. The Secretary to the Tribunal has forwarded copies of orders passed by the Adjudicator on these applications and has requested the Government to publish them in the Gazette. Labour Department states that in view of the H.L.A.'s opinions No. 12050, dated 15.12.1947 and No. 976, dated 14.1-1948, given in the case of the Empire of India Life Assurance Company Ltd, and its employees, the orders made on applications under Rule 20 may be published and need not be made binding. Joint Secretary, Labour Department is of the view that these are neither awards nor corrigenda but orders rejecting applications made by parties and, therefore, it is not necessary to publish them particularly when there is no provision requiring the publication of such orders.

2. Sub-section (1) of section 15 of the Industrial Disputes Act, 1947 provides that where an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, submit its award to the appropriate Government. Sub-section(2) provides that on receipt of award, the appropriate Government shall by order in writing declare the award

to be binding. Section 17 provides that the report of a Board or Court and the award of a Tribunal together with any minute of dissent recorded therewith, shall within a period of one month from the date of its receipt by the appropriate Government be published in such manner as it thinks fit. Rule 20 of the Industrial Disputes(Bombay) Rules, 1947, empowers the Tribunal to correct any clerical mistake or error arising from an accidental slip or omission in any award it issues. It is clear from these provisions that it is incumbent on Government to publish the award of the Tribunal in the Gazette within a period of one month from the date of its receipt and under section 15(2) Government has to pass an order declaring the award to be binding. Mistakes or errors corrected by the Tribunal under rule 20 of the Industrial Disputes(Bombay) Rules, 1947 would be incorporated in the award itself. It would therefore be necessary to publish them in the Gazette and make them binding as in the case of the award. In the present case applications made under rule 20 by the Alcock Ashdown &Co. Bombay, Rechabdson and Cruddas and the Mazgaon Dock Ltd. Bombay, were all rejected by the Tribunal. No corrections are therefore to be made in the awards proper. Consequently it is not necessary either to publish these orders under section 17 of to make them binding under section 15(2). R.L.A's opinion No. 12090, dated 15.12.1947 and No. 576,dated 16.1.1948, given in the case of the Employees of India Life Assurance Company Ltd. and its employees are distinguishable in as much as the corrections made in the award were typographical and not under rule 20 of the Rules. The view taken by the joint Secretary at p/200 ante is correct.

Sd/- P M

Remembrancer of Legal Affairs.

U.O. to Labour Department, No. 9365 ,dated the 9th September 1948.

M.R.D.
C.A.

L.DM.R.I. No. 12301 dt. 30-9-47.

Submitted.

Please see Labour Deptt. and Secy Labour's note at pp. 11-13 ante. Secy. Labour is of the view that unless "employment" is in connection with a business, trade, undertaking manufacture or calling of an employer it is not covered by the Industrial Disputes Act,1947 and domestic service being not in connection with any of these it is not covered by the Act,1947. The R.L.A. is requested to advise in the matter.

2. "Workman" is defined in clause (5(of sec. 2 of the Industrial Disputes Act, 1947 means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes,for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute etc. "Industry" as defined by clause(J) means any business trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. This definition is no doubt an inclusive one but the words "any calling, service, employment, handicraft, or industrial occupation or avocation of workmen" have to be read ejusdem generis. Read in this light a domestic servant will not be included in the definition of workmen. The expression "workman" as defined in section 10 of the Employers and Workman Act, 1873,does not include a domestic or menial servant(Pl. see words and Phrases judicially defined byBurrows Vol.V.p.527). Although the definition of workman does not specifically exclude a domestic servant it will have to be construed primarily in relation to the object of the Act, which is the settlement of industrial disputes(Pl. see preamble to the Act.). Consequently the dispute between a domestic serservant and his master would not fall within the purview of the Act.

Seen and returned. The view taken by the Secy.

P.T.O

Seen and returned . The view taken by the Secy. Labour Deptt. at p. 13 ante correct.

Sd/-

A Reply A.

U.O.R. to
Labour Deptt.
No.10641 and
13-11-1948.

Reply may be as at A

RTL.,
Sd.-
9-11

R.L.A.
Sd/-
8-9

M.R.D.
7-6-66
C.4

Office of the R.L.A.

Question whether Mechanical Engineer, Chemist, head clerk etc. are 'Workmen'.

Industrial Disputes Act, 1947. Section 2(5).

By Labour Department Order No. 2222/46, dated the 14th May 1948 issued under section 10(1) of the Industrial Disputes Act, 1947, Government has referred the industrial dispute between the Indian Vegetable Products Ltd., Bombay and the workmen employed under it for adjudication to the Industrial Tribunal. The General Secretary of the I.V.P. Workers Union has forwarded a statement showing the duties performed by certain categories of workmen who were excluded from the adjudication order, and has been pressing for their inclusion in the adjudication. Secretary, Labour Department is of the view that they are not workmen but the R.L.A. is requested to advise in the matter.

2. The question referred to the R.L.A. is whether (1) the Mechanical Engineer and Assistant Mechanical Engineer (2) the Shift Engineers, (3) Chemists (4) Head Clerk (5) yards Foreman (6) Electrical Foreman and (7) Fitter Foreman in the Indian Vegetable Products Ltd., Bombay can be held to be workmen within the meaning of that word as defined in the Industrial Disputes Act, 1947.

3. "Workman" as defined in section 2(5) of the Industrial Disputes Act, 1947 means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute etc. The question whether a particular person can be said to be engaged in manual work has been full explained by the R.L.A. in his opinon No. 9218, dated the 29th September 1948. In the light of that opinion the Mechanical and Assistant Mechanical

-2-

Engineers, shift Engineers, yard foreman, Electrical foreman and fitter foreman would fall within the category of workmen. The head clerk would also fall within the said definition inasmuch as he has to do skilled clerical work suchas preparation of accounts, statements, correspondence etc. As regards the Chemist the question is not quite free from doubt, because the manual work if any involved in his case is only incidental to his employment and on a strict interpretation he may not be included within the definition.

Sd/- P.M.L

19-4.

Secretariat of Legal Affairs.

U.O. to Labour Department, No. 10068, dated the 29th November 1943.

U.R.D.
7-6-96
C.4

Office of the R.L.A.

Mr. J.B. Desai, President of the Jari Kamgar Mandal, Surat, has made the following representation to the Honourable Minister for Labour and Housing, Government of Bombay:

"In November 1947 after a bitter strike a settlement was arrived at between the manufacturers represented by (Jari Vapari Mandal, Surat' and the Akhandedars thenrepresented by the 'Jari Kamdar Mandal' that the the manufacturer shall pay to his Akhandedar Rs. 30/4/- for each 100 tolas of silver processed as wages. The said settlement was in writing signed by both the parties.

"This year in September (1948) the manufacturer in violation of the agreement aff ected a wage cut and decided to pay Rs. 30/4/- for the 100 tolas of silver processed by Akhandedar. Thisx wage cut is arbitrary, unjustifiable, unreasonable, illogical and illegal. The manufacturer has no right to effect a wage cut. On the contrary it is downright unfair labour practice. The wage cut is resented by all Akhandedars-employees.

"A notice dated 26-10-1948 under the Industrial Disputes Act, 1947 was given to the Master Manufacturers as represented by Jari Vapari Mandal, Safe Deposit Chambers, Chowtapool, Surat, to restore the said wage cut within 14 days. A copy was sent to the Deputy Director of Labour Administration but is regretted that nothing seems to have been done by them. As a last and inevitable recourse a strike is resolved to as and from 10-11-1948."

On these facts he has requested the Honourable Minister to refer to adjudication the dispute that all Akhandedars should be paid Rs. 30-4-0 for each 100 tolas of silver processed. Under Secretary, Labour Department, in his note at pages 7 to 9 considers that the dispute cannot be referred to arbitation under the Industrial Disputes Act, 1947, for the following reasons:-

"The workers whose dispute is being referred to for adjudication are time workers i.e. workers who are paid at the time rate and who are working at factories or at places of the merchants. The 'Akhandedars' are on the other hand workers who are paid on peice work basis and who do work at their own places. The material to this class is supplied by the Jari merchants and for every piece of 100 tola jari work done, they are paid at the rate fixed for that much work..... These workers might said to be their own masters with this difference that theysupplied labour on contract terms and the other party supplied the material - both cloth and jari tar. Such a relationship also implied the possibility of any 'akhandedar' doing work given to him by more merchants than one, as also the possibility of not doing work for anyone of the merchants, if that suited his wish or circumstance during the particular periods".

The R.L.A. is requested to advise whether the dispute between the Zari merchants and the Akhadedars can be referred for adjudication under section 10 of the Industrial Disputes Act, 1947.

2. Under section 10 clause (a) of the Industrial Disputes Act, 1947, if any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing refer the dispute to a Tribunal for adjudication. What is, therfore, necessary is that that an industrial dispute must exist or must be apprehended. "Industrial dispute" as defined in calues (k) of section 2 means any dispute or differences bet- between employers and employers g or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. "Workman" as defined in clause (s) means anyperson employed (including an apprentice) in any industry to do any skilled or unskilledx manual or clerical work for hire or reward and include etc. "Industry" as defined in clause (j) means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment ,handicraft, or industrial occupation or avocation of workmen. This definition of 'industary' is veryvide. The business of silver processing in which the Akhadedars are employed is obviously an industry within the meaning of clause(j). The definition of "the workman" does not require that the workman must have been employed in a factory or at the places of the employer; nor does it show show that the workman must have been a wholetime worker in the business of his employer. The zari business in which these Akhadedars are employed is a beusiness which can be done by the Akhadedars at their own places and on piece-work basis. The Industrial Disputes Act contains no provison which directly or indirectly

precludes the settlement of disputes between workmen and employers merely because the employment is on such basis and that the work can be done bythe employees at their own places and the employees can undertake the work of more than one employer. What appears necessary under the Act is that the workmen must have been employed in the industry and the work must be either skilled or unskilled manual or clerical work and the employment must be for hire or reward. The expression hire or reward is wide enough to cover the payment in accordance with a piece-work rate. In the present case all these ingredients are fully satisfied. The Alhadadars are skilled manual workmen and are employed in the industry for hire or reward. Consequently, the view taken by the under Secretary, Labour Department, does not appear to be correct and there appears to be no legal objection to refer the dispute under section 10 clause (c) to a Tribunal for adjudication.

Sd/- P M L
4-12

Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 11726 dated the 10th December 1943.

H.R.D.
9-6-56
C.A.

Office of the R.L.A.

Although section 63(iv) of the Bombay Industrial Relations Act, 1946, uses the expression "time limit" The words "such proceeding" would mean the entire proceedings withreference to the proviso to section 62(1); otherwise instead of the words "such proceeding" the words "each stage of such proceedi would have been substituted so as to conform to the wording of section 62(1) Further the second proviso would be inexplicable if the interetation of the Labour Court, Ahmedabad were to hold good. The view taken by the Labour Department is correct.

Sd/-
14-12

Remembrancer of Legal Affairs.

U.R. to Labour Deptt., No.11886 dated the 15th Dec. 1948.

M.R.D.
7-6-56
C.A

Section of the B.I.R.A.

Section 30 of the Bombay Industrial Relations Act, 1946, provides that the following shall be entitled to act in the order of preference specified as the representative of employees in an industry in any local area-

(i) Representative Union for such industry;
(ii) a Qualified or Primary Union of which the majority of employees directly affected by the change concerned are members;
(iii) any Qualified or Primary Union in respect of such industry authorised in the prescribed manner in that behalf by the employees concerned;
(iv) the Labour Officer if authorised by the employees concerned;
(v) the persons elected by the employees in accordance with the provisions of section 28 or where the proviso to sub-section (1) thereof applies, the employees
(vi) the Labour Officer.

The third proviso to the section which is material says that where in any proceeding the persons entitled to act under clause(v) are more than five, the prescribed number elected from amongst them in the prescribed manner shall be entitled to act instead. The manner is prescribed in rule 47a of the Bombay Industrial Relations Rules, 1947.

2. It is apparent that section 30 makes provision for representation of employees in an industry as distinguished from an undertaking. The use of the word "representative" in the singular and the whole scheme of preference which contemplates one type of representative excluding all others show that for the employees in an industry as a whole there can at any one time be only one of the five types of representatives. The multiplicity of representatives as suggested by the Director of Labour Welfare is not warranted by the scheme of section 30.

3. The first two types namely, (i) and (ii), have admittedly no application to the present case. The third is "any Qualified or Primary Union in

respect of such industry authorised in the prescribed manner in that behalf by the employees concerned." The authorisation which is to be done under rule 46 must be by the employees concerned. The employees concerned in this case are the employees in the industry and not only in the 20 undertakings which have authorised the Rashtriya Mill Mazdoor Sangh. An authorisation by some of the employees in the industry is not authorisation of the kind required by clause(iii) of section 30for, otherwise even where the authorisation is done by a minority the Union would practically get the representative status which it could not have had under clause(ii). In my opinion, therefore, the Rashtriya Mill Mazdoor Sangh cannot, on the strength of the authorisation by 20 undertakings, claim in this case to be a representative of employees under clause (iii) of section 30.

4. Clause (iv) is also inapplicable.

There is, however, no reason why clause(v) should not come into play in this case. It may be that out of the total number of 81 undertakings, 8 have failed to elect any representative under section 28(1) and that the ninth has so far held no meeting under section 28(1). But there are persons elected by the employees of 72 concerns, and when such elected persons are available, the scheme of the section does not permit the Labour Officer to be the representative. In my opinion, therefore, the persons elected by the 72 concerns (including those which have authhorised the Rashtriya Mill Mazdoor Sangh) should proceed under rule 47 to elect from amongst them the prescribed number who shall be entitled to act for them.

Sd/- P.M.L.
30-11

Remembrancer of Legal Affairs,

U.R. to Labour Deptt. No. 11315 d/-30-11-43

M.R.D.
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